

1 Timothy W. Brown (*Pro Hac Vice*)  
2 **THE BROWN LAW FIRM, P.C.**  
3 240 Townsend Square  
4 Oyster Bay, New York 11771  
5 Telephone: (516) 922-5427  
6 Fax: (516) 344-6204  
7 Email: tbrown@thebrownlawfirm.net

8 Robert C. Moest, Of Counsel, SBN 62166  
9 **THE BROWN LAW FIRM, P.C.**  
10 2530 Wilshire Boulevard, Second Floor  
11 Santa Monica, California 90403  
12 Telephone: (310) 915-6628  
13 Fax: (310) 915-9897  
14 Email: RMoest@aol.com

15 *Counsel for Plaintiff*

16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 MICHELE OGLINA, DERIVATIVELY  
20 AND ON BEHALF OF AMPIO  
21 PHARMACEUTICALS, INC.,

22 Plaintiff,

23 v.

24 MICHAEL MACALUSO, DAVID  
25 BAROR, PHILIP H. COELHO,  
26 RICHARD B. GILES, DAVID R.  
27 STEVENS, VAUGHAN L. CLIFT,  
28 MARK D. MCGREGOR, AND  
GREGORY A. GOULD,

Defendants,

And

AMPIO PHARMACEUTICALS, INC.,

Nominal Defendant.

Case No. 2:15-cv-5970-TJH-PJW

~~PROPOSED~~ FINAL JUDGMENT

JS-6

1           This matter came before the Court for a hearing pursuant to the Order of this  
2 Court entered on April 20, 2017 (“Preliminary Approval Order”), on the application of  
3 the Parties for approval of the Settlement set forth in the Stipulation of Settlement (the  
4 “Stipulation”), executed as of April 14, 2017 and filed with the Court on that date. All  
5 capitalized terms used herein have the meanings set forth and defined in the  
6 Stipulation.

7           The Court has received a declaration attesting to filing of the Notice with the  
8 United States Securities and Exchange Commission in accordance with the  
9 Preliminary Approval Order, due and adequate notice having been given to Ampio  
10 Shareholders as required by the Preliminary Approval Order, and the Court having  
11 considered all papers filed and proceedings in this *Ogline* Action and otherwise being  
12 fully informed of the matters herein, and good cause appearing therefore, IT IS  
13 HEREBY ORDERED, ADJUDGED AND DECREED as follows:

14           1.     This Court has jurisdiction over the subject matter of the *Ogline* Action,  
15 including the terms and conditions of the Stipulation and all exhibits thereto, and over  
16 Parties to the Stipulation.

17           2.     Based on evidence submitted by Ampio’s counsel, the Court finds that  
18 the Notice was published according to this Court’s Preliminary Approval Order. This  
19 Court further finds that the form and content of the Notice, as previously preliminarily  
20 approved by the Court, complied with the requirements of Federal Rule of Civil  
21 Procedure 23.1, satisfied the requirements of due process, and constituted due and  
22 sufficient notice of the matters set forth therein.

23           3.     A full opportunity has been offered to Ampio Shareholders to object to  
24 the proposed Settlement and to participate in the hearing thereon, and as such, all  
25 Ampio Shareholders are bound by this Order.

26           4.     The Settlement is found to be fair, reasonable, adequate and in the best  
27 interests of Ampio and Ampio Shareholders.  
28

1           5.     The Court finds, for settlement purposes, that: (1) the *Oglina* Action was  
2 properly brought as a shareholder derivative suit pursuant to Federal Rule of Civil  
3 Procedure 23.1; and (2) Plaintiff Michele Oglina adequately represented the interests  
4 of Ampio Shareholders in enforcing the rights of Ampio.

5           6.     The Stipulation and the terms of the proposed Settlement set forth therein  
6 are, in all respects, hereby finally approved. The Parties to the Stipulation are directed  
7 to consummate the Settlement in accordance with the terms and provisions of the  
8 Stipulation.

9           7.     In accordance with Paragraph 1(t) of the Stipulation, for purposes of this  
10 Final Judgment the term “Released Persons” shall mean: (a) Ampio and the  
11 Defendants, as well as any person, partnership, firm, corporation, limited liability  
12 company, trust or other entity or organization in which Ampio or any Defendant has a  
13 controlling interest or which is or was related to or affiliated with any of them; and (b)  
14 with respect to each of the Persons in subsection (a), their respective past, present or  
15 future directors, officers, employees, insurers, reinsurers, attorneys, agents, partners,  
16 principals, advisors, investment advisors, auditors, accountants, trustees, underwriters,  
17 investment bankers, subsidiaries, parents, successors, predecessors, heirs, Immediate  
18 Family, and anyone acting or purporting to act for or on behalf of any of them or their  
19 successors.

20           8.     In accordance with Paragraph 1(s) of the Stipulation, for purposes of this  
21 Final Judgment the term “Released Claims” shall mean: any and all claims, rights,  
22 demands, causes of action or liabilities of any kind, nature and character whatsoever,  
23 whether based on federal, state, local, statutory or common law, or any other law, rule  
24 or regulation, whether foreign or domestic, whether fixed or contingent, accrued or  
25 unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,  
26 whether known or unknown including, without limitation, Unknown Claims (as  
27 defined below) (collectively “Claims”) against any of the Released Persons that have  
28 been, could have been, or could in the future be, asserted in the Actions or in any other

1 forum or proceeding by any Person (including but not limited to Plaintiffs and the  
 2 Demand Shareholder) derivatively on behalf of Ampio, or by Ampio itself against any  
 3 of the Released Persons that arise out of or are related, directly or indirectly, in any  
 4 way to:

5 (a) any of the facts, matters, occurrences, actions, practices, conduct, events,  
 6 transactions, statements, disclosures, representations, misrepresentations,  
 7 omissions, or failures to act that were involved, set forth, referred to,  
 8 asserted, alleged, or that could have been alleged in either of the Actions  
 9 or the Shareholder Demand Letter including, but not limited to, claims  
 10 for breach of fiduciary duty, abuse of control, mismanagement, gross  
 11 mismanagement, waste of corporate assets, misappropriation of  
 12 information, unjust enrichment, insider trading, contribution and  
 13 indemnification, money damages, disgorgement, any and all demands,  
 14 actions, damages, claims, rights or causes of action, or liabilities  
 15 whatsoever; or

16 (b) that would have been barred by res judicata had either of the Actions  
 17 been fully litigated to a final judgment,  
 18

19 *provided that* Released Claims shall not include claims to enforce the Settlement.

20 9. In accordance with Paragraph 1(w) of the Stipulation, for purposes of this  
 21 Final Judgment the term “Unknown Claims” shall mean: any Released Claims which  
 22 Plaintiffs, the Demand Shareholder, Ampio or any Ampio Shareholder (claiming in  
 23 the right of, or on behalf of, the Company) does not know or suspect to exist in his,  
 24 her or its favor at the time of the release of the Released Persons which, if known by  
 25 him, her or it, might have affected his, her or its settlement with and release of the  
 26 Released Persons, or might have affected his, her or its decision not to object to this  
 27 Settlement. Unknown Claims include those claims in which some or all of the facts  
 28 comprising the claim may be suspected, or even undisclosed or hidden. With respect

1 to any and all Released Claims, Plaintiffs, the Demand Shareholder and Ampio  
2 stipulate and agree that, upon the Effective Date, they shall expressly waive, and every  
3 Ampio Shareholder shall be deemed to have, and by operation of the Final Judgment  
4 shall have, expressly waived the provisions, rights, and benefits of California Civil  
5 Code § 1542, which provides:

6  
7 **A general release does not extend to claims which the creditor does**  
8 **not know or suspect to exist in his or her favor at the time of**  
9 **executing the release, which if known by him or her must have**  
10 **materially affected his or her settlement with the debtor.**

11 Plaintiffs, the Demand Shareholder and Ampio shall expressly waive, and every  
12 Ampio Shareholder shall be deemed to have, and by operation of the Final Judgment  
13 shall have, expressly waived any and all provisions, rights, and benefits conferred by  
14 any law of any state or territory of the United States, or principle of common law or  
15 foreign law, which is similar, comparable or equivalent in effect to California Civil  
16 Code § 1542.

17 Plaintiffs, the Demand Shareholder, Ampio and/or any Ampio Shareholder may  
18 hereafter discover facts in addition to or different from those which he, she or it now  
19 knows or believes to be true with respect to the subject matter of the Released Claims,  
20 but Plaintiffs and Ampio shall expressly have, and every Ampio Shareholder shall be  
21 deemed to have, and by operation of the Final Judgment shall have, fully, finally, and  
22 forever settled and released any and all Released Claims, known or unknown,  
23 suspected or unsuspected, contingent or non-contingent, whether or not concealed or  
24 hidden, which now exist, or heretofore have existed, upon any theory of law or equity  
25 now existing or coming into existence in the future, including, but not limited to,  
26 conduct which is negligent, reckless, intentional, with or without malice, or a breach  
27 of any duty, law or rule, without regard to the subsequent discovery or existence of  
28 such different or additional facts. Plaintiffs, the Demand Shareholder and Ampio  
acknowledge, and every Ampio Shareholder shall be deemed by operation of the Final

1 Judgment to have acknowledged, that the foregoing waivers were separately  
2 bargained for and a key element of the Settlement.

3 10. This *Ogline* Action and all claims contained therein, as well as all  
4 Released Claims, are hereby dismissed with prejudice in their entirety, on the merits,  
5 as against all Released Persons. Each party shall bear its own fees and costs, except as  
6 set forth herein.

7 11. Upon the Effective Date, Plaintiffs, the Demand Shareholder, Ampio and  
8 all current and former Ampio Shareholders, on behalf of themselves, and each of their  
9 respective personal representatives, Immediate Family, trustees, heirs, executors,  
10 administrators, parent entities, associates, affiliates, predecessors, successors and  
11 assigns, and any other Person claiming (now or in the future) to be acting on behalf of  
12 any of them, shall be deemed to have, and by operation of this Final Judgment shall  
13 have, fully, finally, and forever released, relinquished, settled and discharged all  
14 Released Claims against the Released Persons and shall be permanently barred and  
15 enjoined from instituting, commencing, participating in, continuing, maintaining,  
16 asserting or prosecuting any Released Claim against any of the Released Persons, or  
17 assisting any Person in instituting, commencing, participating in, continuing,  
18 maintaining, asserting or prosecuting any Released Claim against any of the Released  
19 Persons. Nothing herein shall in any way impair or restrict the rights of any of the  
20 Parties to enforce the terms of this Stipulation.

21 12. Upon the Effective Date, the Released Persons and shall be deemed to  
22 have, and by operation of the Final Judgment shall have, fully, finally, and forever  
23 released, relinquished, and discharged Plaintiffs, the Demand Shareholder, and  
24 Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of,  
25 relating to, or in connection with the institution, prosecution, assertion, settlement, or  
26 resolution of the Released Claims. Nothing herein shall in any way impair or restrict  
27 the rights of any of the Parties to enforce the terms of this Stipulation.  
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1           13. Pursuant to the Stipulation, the Effective Date of the Settlement shall not  
 2 occur until, among other things, the *Loyd* Action has been dismissed with prejudice  
 3 and that dismissal order is Final.

4           14. Plaintiffs' Counsel in the action are hereby awarded attorneys' fees and a  
 5 reimbursement of expenses collectively totaling \$385,000.00 ("Fee and Expense  
 6 Award"). This Court finds that this amount is fair and reasonable under the facts and  
 7 circumstances of this case. Payment of such award of attorneys' fees and  
 8 reimbursement of expenses shall be made in accordance with the provisions of the  
 9 Stipulation.

10           15. Plaintiffs and the Demand Shareholder are each awarded Service Awards  
 11 in the amount of \$2,500, which shall be funded from Plaintiffs' Counsel's Fee and  
 12 Expense Award.

13           16. This Final Judgment, the Stipulation and all of its provisions, and any  
 14 negotiations, proceedings or agreements relating to the Stipulation and the Settlement,  
 15 and any matters arising in connection with such negotiations, proceedings or  
 16 agreements, and any acts performed or documents executed pursuant to or in  
 17 furtherance of this Stipulation:

18               a) shall not be offered or received against any of the Released  
 19 Persons as evidence of a presumption, concession, or admission of any kind;

20               b) shall not be offered or received against any of the Released  
 21 Persons as evidence of an admission by any of those Released Persons with respect to  
 22 the truth of any fact alleged in any of the Derivative Matters or the validity of any  
 23 Released Claim, or the deficiency of any defense that has been or could have been  
 24 asserted, or of any liability, negligence, fault, or wrongdoing of the Released Persons;

25               c) shall not be offered or received against the Released Persons as  
 26 evidence of any fault, misrepresentation, omission or other actionable conduct with  
 27 respect to any statement or written document approved or made by any of the  
 28 Released Persons;



1           d) shall not be offered or received against the Released Persons as  
2 evidence of any liability, negligence, fault or wrongdoing, or in any way referred to  
3 for any other reason as against any of the Released Persons, in any other civil,  
4 criminal or administrative action or proceeding, other than such proceedings as may  
5 be necessary to effectuate the provisions of this Stipulation; provided, however, that if  
6 this Stipulation is approved by the Court, the Released Persons may refer to it to  
7 effectuate the release of Released Claims and other liability protections granted them  
8 hereunder;

9           e) shall not be construed against any of the Released Persons as an  
10 admission or concession that the consideration to be given hereunder represents the  
11 amount that could be or would have been recovered after trial;

12           f) shall not be construed as or received in evidence as an admission,  
13 concession or presumption against Plaintiffs or the Demand Shareholder that any of  
14 their claims are without merit, or that any defenses asserted by the Defendants have  
15 any merit, or that damages recoverable in the Derivative Matters would not have  
16 exceeded the Settlement Amount; and

17           g) shall not, in the event of a Termination, be used by any Party for  
18 any purpose in any trial in any of the Derivative Matters,  
19 *provided that*, any Party may file or introduce this Stipulation and/or the Final  
20 Judgment in any action or proceeding that may be brought to enforce the terms of this  
21 Stipulation and/or the Final Judgment, or any action or proceeding related to rights or  
22 claims of Defendants relating to indemnification and/or advancement in connection  
23 with the Derivative Matters.

24           17. The Court finds that during the course of the Derivative Matters, the  
25 Parties and their counsel at all times complied with Federal Rule of Civil Procedure  
26 11.

27           18. Without in any way affecting the finality of this Final Judgment, this  
28 Court shall retain jurisdiction over the Parties to the Stipulation and the Released



1 Parties with respect to all matters related to the *Oglina* Action and over all  
2 proceedings related to the implementation and enforcement of the terms of the  
3 Stipulation, including all matters pertaining to requests for attorneys' fees and  
4 expenses.

5 19. Any order regarding an award of attorneys' fees and expenses, or any  
6 appeal, modification or change of such an order, shall in no way disturb or affect the  
7 finality of this Final Judgment and shall be considered separate from this Final  
8 Judgment.

9 20. This Settlement shall be a final and complete resolution of all disputes  
10 among the parties. No party to the Stipulation may assert in any forum that the  
11 Actions were brought, commenced or prosecuted by the Plaintiffs or their counsel in  
12 bad faith or that the Actions were not filed or raised in good faith or was not settled  
13 voluntarily after negotiating at arm's-length and in good faith after consultation with  
14 competent legal counsel.

15 21. Nothing in this Final Judgment constitutes or reflects a waiver, release or  
16 discharge of any rights or claims of Defendants against their insurers, or their insurers'  
17 subsidiaries, predecessors, successors, assigns, affiliates, or representatives.

18 22. The Parties are hereby authorized, without further approval of the Court,  
19 to unanimously agree to and adopt in writing such amendments, modifications, and  
20 expansions of the Stipulation and all exhibits attached thereto, provided that such  
21 amendments, modifications, and expansions of the Stipulation are done in accordance  
22 with the terms of Paragraph 24 of the Stipulation, are not materially inconsistent with  
23 this Final Judgment and do not materially limit the rights of Ampio Shareholders or  
24 the Released Persons under the Stipulation.

25 23. In the event that the Settlement does not become effective in accordance  
26 with the terms of the Stipulation, then this Final Judgment shall be rendered null and  
27 void to the extent provided by and in accordance with the Stipulation and shall be  
28 vacated, and in such event, all orders entered and releases delivered in connection

1 herewith shall be null and void to the extent provided by and in accordance with the  
2 Stipulation, and the provisions of Paragraph 20 of the Stipulation shall apply.

3 24. The provisions of this Final Judgment constitute a full and complete  
4 adjudication of the matters considered and adjudged herein, and the Court determines  
5 that there is no just reason for delay in the entry of judgment. The Clerk is hereby  
6 directed to immediately enter this Final Judgment.

7  
8 SO ORDERED this 28th day of June, 2017.

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The Honorable Terry J. Hatter, Jr.  
12 United States District Court Judge  
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